APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 66-395 -Cr-TC

18 USC 474 M/S $5,000 - 15 yrs, or both

UNITED STATES OF AMERICA
v.
MORTIMER NORMAN KORAN

INDICTMENT

The Grand Jury charges:

COUNT ONE

That on or about the **27th day of June, 1966,** at Hallandale, Broward County, in the Southern District of Florida, the defendant,

MORTIMER NORMAN KORAN

did, with intent to defraud the United States, **make a print** of an obligation of the United States, to wit: a $5.00 Federal Reserve Note drawn on the Federal Reserve Bank of New York, Series 1950E, Check Letter "P," Face Plate No. 399, Serial No. B34871063F, bearing facsimile signature of Henry H. Fowler, Secretary of the Treasury, and Kathryn O'Hay Granahan, Treasurer of the United States; in violation of Title 18, United States Code, Section 474.

COUNT TWO

That on or about the **27th day of June 1966,** at Hallandale, Broward County, in the Southern District of Florida, the defendant,

MORTIMER NORMAN KORAN

did, with intent to defraud the United States, **make a print** of an obligation of the United States, to wit: a $1.00 Federal Reserve Note, drawn on the Federal Reserve Bank of St. Louis, Missouri, Series 1963A, Check Letter "C," Face Plate No. 183, Serial No. H-06297830A, bearing facsimile signature of Henry H. Fowler, Secretary of the Treasury, and Kathry O'Hay Granahan, Treasurer of the United States; in violation of Title 18, United States Code, Section 474.

COUNT THREE

That on or about the **28th day of June 1966,** at Hallandale, Broward County, in the Southern District of Florida, the defendant,

MORTIMER NORMAN KORAN

did, **with intent to defraud** the United States, **make a print** of an obligation of the United States, to wit: a $1.00 Silver Certificate, Series 1957, Check Letter "B," Face Plate No. 398, Serial No. P88668 314A, bearing facsimile signature of Robert B. Anderson, Secretary of the Treasury, and Ivy Baker Priest, Treasurer of the United States; in violation of Title 18, United States Code, Section 474.

COUNT FOUR

That on or about the **27th day of June, 1966,** at Hallandale, Broward County, in the Southern District of Florida, the defendant,

MORTIMER NORMAN KORAN

did, knowingly, possess without authority from the Secretary of the Treasury or other proper officer, obligations made in part after the similtude of an obligation

issued under the authority of the United States, to wit: a $5.00 Federal Reserve Note drawn on the Federal Reserve Bank of New York, Series 1950E, Check Letter "P," Face Plate No. 399, Serial No. B34871063F, bearing facsimile signature of Henry H. Fowler, Secretary of the Treasury, and Kathryn O'Hay Granahan, Treasurer of the United States, and a $1.00 Federal Reserve Note, drawn on the Federal Reserve Bank of St. Louis, Missouri, Series 1963A, Check Letter "C," Face Plate No. 183, Serial No. H-06297830A, bearing facsimile signature of Henry H. Fowler, Secretary of the Treasury, and Kathryn O'Hay Granahan, Treasurer of the United States, with the intent to use said obligations to facilitate future sales of counterfeited obligations of the United States; in violation of Title 18, United States Code, Section 474.

COUNT FIVE

That on or about the 28th day of June, 1966, at Hallandale, Broward County, in the Southern District of Florida, the defendant,

MORTIMER NORMAN KORAN

did, knowingly, possess without authority from the Secretary of the Treasury or other proper officer, obligations made in part, after the similtude of an obligation issued under the authority of the United States, to wit: a $1.00 Silver Certificate, Series 1957, Check Letter "B," Face Plate #398, Serial No. P88668 314A, bearing facsimile signature of Robert B. Anderson, Secretary of the Treasury, and Ivy Baker Priest, Treasurer of the United States, with the intent to use said obligation to facilitate future sales of counterfeited obligations of the United States; in violation of Title 18, United States Code, Section 474.

COUNT SIX

That on or about the 3rd day of August 1966, in Hallandale, Broward County, in the Southern District of Florida, the defendant,

MORTIMER NORMAN KORAN

with intent to defraud the United States, did knowingly and unlawfully possess paper similar to that distinctive paper which had previously been adapted to the making of obligations of the United States, to wit:

1500 sheets of 20 lb white husky bond paper 8½" x 11",

1000 sheets of 20 lb Sphinx Park Lane Bond paper, 8½" x 11" (canary),

500 sheets of 20 lb Georgia-Pacific blue bond 8½" x 11",

500 sheets of white bond paper, 8½" x 11",

250 sheets, green bond paper 8½" x 11"

without the authority of the Secretary of the Treasury or some other proper officer of the United States; in violation of Title 18, United States Code, Section 474.

A TRUE BILL
CHARLES E. JENKINS
FOREMAN

WILLIAM A. MEADOWS, JR.
UNITED STATES ATTORNEY
By: Michael J. Osman
Assistant U. S. Attorney

APPENDIX B

(TITLE OMITTED)

NO. 66-395-CR-TC

MOTION TO SUPPRESS

COMES NOW the Defendant, MORTIMER NORMAN KORAN, by and through his undersigned attorney, and files this his Motion to Suppress any and all evidence which the prosecution intends to introduce against the Defendant in the forthcoming trial of the above entitled cause, which evidence was obtained as a result of an illegal arrest and/or unlawful search and seizure contrary to the Constitution of the State of Florida and the Constitution of the United States of America.

WHEREFORE, the Defendant, MORTIMER NORMAN KORAN, prays that this Motion be granted.

GERALD KOGAN

GERALD KOGAN
Attorney for Defendant
1201 Biscayne Building
Miami, Florida 33130
Phone 371-2661

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed to WILLIAM A. MEADOWS, U. S. Attorney, P. O. Box 1070, Miami, Florida, this 8th Day of September, 1967.

GERALD KOGAN

Gerald Kogan

APPENDIX C

(TITLE OMITTED)

NO. 66-395-CR-TG

MOTION FOR NEW TRIAL

COMES NOW the Defendant, MORTIMER NORMAN KORAN, by and through his undersigned attorneys, and moves the Court to grant him a new Trial for the following reasons:

1. The Court erred in denying Defendant's Motion For Acquittal made at the conclusion of the Government's case.

2. The Court erred in denying Defendant's Motion For Acquittal made at the conclusion of all evidence.

3. The verdict is contrary to the weight of the evidence.

4. The verdict is not supported by substantial evidence.

5. The verdict is contrary to the law.

6. The verdict is contrary to both the law and the evidence.

7. The Court erred in denying the Defendant's Motion To Suppress all tape recorded telephone conversations held between the witness, ART RIVERS, and the Defendant, as well as recordings made as the result of non-telephone conversations that took place between the witness, ART RIVERS, and the Defendant, and between the informer and the Defendant.

8. The Defendant was substantially prejudiced and deprived of a fair Trial by reason of the following: The attorney for the Government in his opening statement alluded to other crimes committed by the Defendant, which said crimes were irrelevant to the instant case, and further in permitting testimony by the Government witnesses pertaining to telephone conversations by the Defendant concerning other crimes and the arrest of Defendant on other crimes, irrelevant to the instant case.

9. The Court erred in denying Defendant's Motions For Mis-Trial.

GERALD KOGAN and
H. ROBERT KOLTNOW
Attorneys for Defendant
1201 Biscayne Building
Miami, Florida 33130

By /s/ GERALD KOGAN

I HEREBY CE .IFY that a copy of the foregoing Motion for New Trial was mailed to WILLIAM A. MEADOWS, U.S. Attorney, P. O. Box 1070, Miami, Florida, this 20th day of September, 1967.

/s/ GERALD KOGAN

APPENDIX D

(TITLE OMITTED)

NO. 66-395-Cr-TC

ORDER

This cause came on to be heard upon the defendant's Motion for New Trial, [and upon the Court having reserved ruling upon the defendant's Motion for Judgment of Acquittal at the close of all the evidence in this cause.] The Court having heard argument of counsel and being otherwise duly advised in the premises, it is

ORDERED AND ADJUDGED that the Motion for New Trial be, and the same is, hereby denied, [and the Motion for Judgment of Acquittal be and the same is, hereby denied.]

DONE AND ORDERED at Miami, Florida, this 24 day of October, 1967.

TED CABOT
United States District Judge

cc: U.S. Attorney (Osman)
Gerald Kogan, Esq.
Atty for defendant
Chief Probation Officer

APPENDIX E

(TITLE OMITTED)

NO. 66-395-CR-TC

On this 27th day of October, 1967 came the attorney for the government and the defendant appeared in person and by Gerald Kogan, Esq., counsel,

It is adjudged that the defendant upon his plea of "not guilty, and a verdict of guilty," has been convicted of the offense of printing and possessing a counterfeit obligation of the United States, with the intent to use said obligation to facilitate sales; in violation of Title 18 USC, Section 474 as charged in Counts Three & Five of the Indictment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS as to each of Counts Three and Five, or until otherwise discharged by due process of law, said period of confinement to run concurrently with each other.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

TED CABOT
United States District Judge

A True Copy. Certified this 27th day of October, 1967.

JOSEPH I. BOGART
Clerk
MELVIN R. STEIN
Deputy Clerk

APPENDIX F

(TITLE OMITTED)

NOTICE OF APPEAL

NOTICE is hereby given that MORTIMER NORMAN KORAN, Defendant, by his undersigned attorneys, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Final Judgment entered in this proceeding on the 27th day of October, 1967, wherein the and Count Five of the Indictment herein, after a plea of not guilty to each of said Counts and a Jury Trial, with a sentence as follows:

Five Years as to Count Three, and
Five Years as to Count Five, concurrently.

DATED this 27th day of October, 1967.

GERALD KOGAN and
H. ROBERT KOLTNOW
Attorneys for Defendant
1201 Biscayne Building
Miami, Florida 33130

By H. ROBERT KOLTNOW

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal was mailed to WILLIAM A. MEADOWS, U.S. Attorney, P.O. Box 1070, Miami, Florida, this 27th day of October, 1967.

H. ROBERT KOLTNOW

APPENDIX G

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 25446

MORTIMER NORMAN KORAN,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Southern District of Florida

---

(January 27, 1969)

Before GEWIN and BELL, Circuit Judges, and BOOTLE, District Judge.

GEWIN, Circuit Judge: Mortimer Norman Koran was convicted in the United States District Court for the Southern District of Florida on Counts Three and Five of an indictment charging substantive offenses relating to counterfeit currency.[1] Count Three charged Koran with

---

[1]The pertinent parts of the statute, 18 U.S.C. § 474 (1964), provide respectively:

> Whoever has in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; or

printing a one dollar silver certificate and Count Five charged him with possession of the certificate. He was sentenced to five years imprisonment on each count, the sentences to run concurrently. We affirm the judgment of conviction.

Appellant Koran urges that his fourth amendment rights were violated by the introduction at his trial of evidence obtained through the use of electronic listening and recording devices. The evidence challenged consisted of (1) the testimony of an investigator, (2) the tape recordings of certain telephone conversations, and (3) the tape recordings of certain non-telephonic conversations. The investigator, Secret Service Agent Rivers, testified that he overheard a conversation between the appellant and a government informer, Schatzabel, in which the appellant discussed plans for printing a large quantity of counterfeit currency. The conversation took place in the appellant's printing establishment while Agent Rivers, stationed a short distance away, listened to the conversation over a radio which received transmissions from a device concealed in Schatzabel's shirt pocket. The tapes of telephone conversations which were received in evidence were recordings of communications between the appellant and Schatzabel and between the appellant and Agent Rivers, who acted incognito as a prospective buyer of counterfeit merchandise. These conversations were re-

---

Whoever prints, photographs, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or sells any such engraving, photograph, print, or impression, except to the United States. . . .

Shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

The jury returned a verdict of "not guilty" on three additional counts.

corded by a device attached to the telephone used by Schatzabel and Rivers, both of whom consented to the recording of the conversations. The non-telephonic tapes were recordings of two conversations between Agent Rivers and appellant Koran which took place beneath a bridge. On both occasions, Rivers was equipped with a transmitter when he met with the appellant. The conversations were recorded by another agent who was posted nearby.

Prior decisions of this court, as well as decisions of the Supreme Court, have approved the use of evidence obtained by the methods employed in this case.[2] The appellant contends, however, that the Supreme Court in **Katz v. United States**[3] charted a new course which demands disapproval of such investigative techniques. He points particularly to the Court's pronouncement in **Katz** that "[w]hat a person knowningly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. . . . But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."[4] The appellant asserts that, since he was unaware of the presence of electronic listening and recording devices, he did not **knowingly** expose to the public his private conversation.

---

[2]Lopez v. United States, 373 U.S. 427 (1963); On Lee v. United States, 343 U.S. 747 (1952); Harris v. United States, ... F.2d ..... (5th Cir. 1968); Handsforth v. United States, 390 F.2d 373 (5th Cir. 1968); Dryden v. United States, 391 F.2d 214 (5th Cir. 1968); Dancy v. United States, 390 F.2d 370 (5th Cir. 1968); Beatty v. United States, 377 F.2d 181 (5th Cir.), *rev'd on other grounds*, 389 U.S. 347 (1967); Hurst v. United States, 370 F.2d 161 (5th Cir. 1967).

[3]389 U.S. 347 (1967).

[4]389 U.S. at .....; 19 L.Ed2d at 582.

This court has previously concluded that **Katz** leaves undisturbed the established law applicable to the methods of investigation employed in this case.[5] And in a recent opinion, the Tenth Circuit reached the same conclusion,[6] emphasizing the language of Mr. Justice White's concurrence in **Katz**:

> When one man speaks to another he takes all the risks ordinarily inherent in so doing, including the risk that the man to whom he speaks will make public what he has heard. . . . It is but a logical and reasonable extension of this principle that a man take the risk that his hearer, free to memorize what he hears for later verbatim repetition, is instead recording it or transmitting it to another.[7]

Government agents in **Katz** had attached electronic listening equipment to the top of a telephone booth. When the defendant used the booth in making calls, the agents overheard his end of the conversations. The Supreme Court held that, since the search did not comply with constitutional standards, the evidence of the conversations was not admissible.

The attempt to equate the case **sub judice** with **Katz** must fail. It is true that appellant Koran did not wish to

---

[5]Dryden v. United States, 391 F.2d 214, 215 (5th Cir 1968); Dancy v. United States, 390 F.2d 370, 371 (5th Cir. 1968); Long v. United States, 387 F.2d 377, 378 n.1 (5th Cir. 1967). *See* Harris v. United States, ... F.2d ..... (5th Cir. 1968) [No. 24303, August 1, 1968]; Handsforth v. United States, 390 F.2d 373 (5th Cir. 1968).

[6]Holt v. United States, ... F.2d ..... (10th Cir. 1968) [No. 9859, September 16, 1968].

[7]389 U.S. at ..... n.1; 19 L.Ed.2d at 589 n.1.

expose his words to the public. However, this fact alone does not suffice, for no criminal desires public exposure of his surreptitious activity. The crucial fact here is that the appellant knowingly took the risk that his conversants might expose his statements. Therefore, he cannot now complain that his conversants did in fact expose the conversations. In **Katz**, on the other hand, exposure of the defendant's private conversation was unaided by his conversant. Instead, exposure resulted from circumstances unrelated to the risk which the defendant knowingly took when he spoke to his conversant. Thus we think it clear that the appellant's reliance upon **Katz** is misplaced.[8]

The appellant argues that Agent Rivers' testimony relating to the conversation he overheard between the appellant and Schatzabel as they talked in the appellant's shop was nevertheless improper because it was unsupported by testimony from Schatzabel, who did not testify. This contention is without merit. The absence of supporting testimony from Schatzabel would have significance only if there existed a complete lack of evidence identifying the appellant as the party with whom Schatzabel conversed. Although Agent Rivers from his listening post could not visually observe the participants in the conversation, the record establishes beyond dispute that the appellant was one of the parties.

---

[8]We are, of course, aware that our analysis of *Katz* is in conflict with a Seventh Circuit decision. In United States v. White, ... F.2d ..... (7th Cir. 1968) [Nos. 16021 & 16022, March 18, 1968], the court held that mere existence of the need to use informers and secret devices to obtain information from a defendant is a clear indication that the defendant seeks to exclude the uninvited ear and, consequently, that this method of investigation violates the defendant's fourth amendment rights. As indicated by our discussion, we do not believe the reach of *Katz* extends so far as the Seventh Circuit suggests.

The statute which the appellant was convicted of violating proscribes the printing of currency and the possession of counterfeit currency "except under authority from the Secretary of the Treasury or other proper officer."[9] The appellant contends that the Government did not prove his lack of authority and, therefore, failed to prove all the elements of the offense charged. While the Government offered no direct proof of the appellant's lack of authority, it did present evidence from which the jury could reasonably infer that he had no authority.[10] Agent Rivers, for example, testified:

> He [the appellant] indicated to me had something to [show] me and I said well, let me look at it. He said, well, I'm not going to show it to you out here in the open.
>
> I says well, let me look at it. So he handed it to me and I opened it up and it was a $1.00 Silver Certificate oversized.
>
> Q Did you have any conversations with him regarding that $1.00 Silver Certificate that he handed you on that occasion?
>
> A Yes. He indicated I should get in the car with him to look at this thing in private, which I did.

---

[9]See note 1 *supra.*

[10]Since we conclude that the Government presented sufficient evidence to support a finding that the appellant lacked authority, we do not reach the question raised in the briefs of whether proving lack of authority is a burden carried by the Government or a defense which the defendant must raise.

> He stated that he had this at home and he had made it the night before and said he made it oversized just to show its detail which would prove his being a good printer.

If the jury believed the broad thrust of the testimony of the witnesses — which it obviously did — the inference was compelled that the appellant had no authority to print currency or to possess counterfeit currency.

Appellant Koran next contends that the trial court erred in permitting references during the prosecutor's opening statement and in the evidence throughout the trial to the appellant's unlawful printing of title certificates and driver's licenses as a part of the same venture which produced the counterfeit currency. Generally, evidence of crimes not charged in the indictment is inadmissible. However, we believe that the evidence in question falls within a widely recognized exception to the general rule which permits such evidence if it tends to prove a common scheme, plan or design on the part of the defendant so closely related to the offense charged that it may serve to establish the offense or to establish an intent in the mind of the accused to commit the offense.[11]

The prosecutor, in his opening statement, also made reference to the appellant's **arrest** for counterfeiting title certificates and driver's licenses. In response the appellant moved for a mistrial. The court denied his motion but offered to instruct the jury to disregard the prosecutor's comment; defense counsel, however, preferred not to have the instruction. The appellant contends that a mistrial was mandatory. We think, however, that the court was clearly within the bounds of its discretion in denying the motion.

---

[11]Pardo v. United States, 369 F.2d 922, 924, (5th Cir. 1966); Robinson v. United States, 366 F.2d 575, 578 (10th Cir. 1966).

The appellant makes one contention which is relevant only to his conviction on Count Five of the indictment, the possession count. The statute under which he was convicted makes unlawful the possession of a counterfeit obligation which is after the similitude of an obligation of the United States. The appellant argues that the oversized silver certificate which he is convicted of possessing was not "after the similitude" of a United States silver certificate.[12] However, it is unnecessary for us to reach this contention since the sentences under both counts run concurrently and since we have concluded that the conviction under the printing count is free of error.[13]

The judgment is AFFIRMED.

---

[12]See note 1 *supra*. The statute makes unlawful the *printing* of anything "in the likeness" of an obligation of the United States, without reference to "similitude." The appellant has not raised the likeness question but, even if he had, it would have been to no avail.

> The legislative purpose is clear that Congress intended, in protecting the currency, to tolerate no manipulation in the making of impressions of government obligations or securities, whether the copies or impressions might be good or bad, and regardless of the purpose for which they might be made. . . . [T]here is no need of proof that such impressions were calculated to deceive.
> Webb v. United States, 216 F.2d 151, 152 (6th Cir. 1954).

[13]Hirabayashi v. United States, 320 U.S. 81, 85 (1943); Mishan v. United States, 345 F.2d 790, 791 (5th Cir. 1965). Whether the "Concurrent sentence" doctrine enunciated in *Hirabayashi* has continiung validity in light of subsequent decisions will be argued before the Supreme Court on March 24, 1969. See Benton v. Maryland, 37 U.S.L.W. 3219 (U.S. Dec. 17, 1968) (No. 201).

APPENDIX H

(TITLE OMITTED)

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

January 27, 1969

APPENDIX I

(TITLE OMITTED)

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(March 28, 1969)

Before GEWIN and BELL, Circuit Judges, and BOOTLE, District Judge.

PER CURIAM: The Petition for Rehearing DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

APPENDIX J

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. .....,

MORTIMER NORMAN KORAN,

Petitioner,

vs.

UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

It is ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 27, 1969.

S/ HUGO L. BLACK
Associate Justice of the Supreme
Court of the United States

Dated this 24th day of April, 1969.